Administration finalizes repeal of 2015 water rule Trump called ‘destructive and horrible’

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FULL TEXT

For years, the fight over how much power the federal government should have to regulate the wetlands and tributaries that feed into the nation's largest rivers has played out across the country.

In the halls of Washington and on sprawling farms and ranches, in courtrooms and corporate boardrooms, a legal tug of war has unfolded over a 2015 rule that gave the Environmental Protection Agency much broader authority over the nation's waterways. Critics say the Obama-era rule gave the federal government far too much power; supporters countered it would prevent the loss of vast swaths of wetlands. Court rulings have temporarily blocked the regulation in 28 states, while keeping it in effect in 22 others.

On Thursday, the Trump administration plans to scrap the Obama-era definition of what qualifies as "waters of the United States" under the Clean Water Act, returning the country to standards put in place in 1986.

"What we have today is a patchwork across the country," EPA Administrator Andrew Wheeler said in an interview. "We need to have a uniform regulatory approach."

Wheeler, who said the administration will finalize a new definition for which water bodies deserve federal protection within a matter of months, said the agency is seeking to end any lingering uncertainty and return more oversight to individual states.

"We want to make sure that we have a definition that once and for all will be the law of the land in all 50 states," Wheeler said.

Critics say the rollback will speed the conversion of wetlands and headwaters, which provide critical habitat for wildlife and support the nation's drinking-water supply. Americans drained about half of the 220 million acres of wetlands in the contiguous United States between the 1780s and 1980s, most of it to expand farmland. That rate began to slow in the 1980s, and after George H.W. Bush took office he pledged to stem the tide of wetlands loss.

"The administration wants to go back to an era where we are destroying wetlands heedlessly," Robert Irvin, president of the American Rivers organization, said of President Trump's latest deregulatory effort.

The 2015 rule gave the federal government authority to oversee a wide array of lakes, streams, wetlands, storm-water controls and ditches feeding into larger waterways that are clearly protected under the 1972 Clean Water Act.

Denise Stranko, federal legislative and policy manager for the Chesapeake Bay Foundation, noted that all but one of the six states in the bay's watershed, along with the District of Columbia, operate under the Obama-era standard. She added that once the administration finalizes its substitute proposal, tens of thousands of acres that connect underground or through ditches to nearby waterways will lose protection.

Targeting the Obama-era regulation ranked among Trump's top priorities when he took office. In February 2017, he issued an executive order directing the EPA to review the regulation in an effort to pave the way for what Trump called "the elimination of this very destructive and horrible rule."

The Clean Water Act makes it unlawful to pollute a "water of the United States" without a permit, but what constitutes such water has been the subject of lengthy litigation.

In a 2006 decision, *Rapanos v. United States*, the Supreme Court's four most conservative justices at the time offered a constrained view that only "navigable waters" met this test. But Justice Anthony M. Kennedy, who refused to join the conservatives or the liberals on the court, said that the government could intervene when there was a "significant nexus" between large water bodies and smaller ones.

Trump's executive order said federal officials should rely on the opinion of the then-Justice Antonin Scalia, who argued that the law should apply to wetlands connected to "relatively permanent" bodies of water as well as navigable waters.

Wheeler is slated to announce the final repeal of the 2015 rule at the National Association of Manufacturers, whose members had pushed to scale it back. "America is now one step closer to smart and balanced regulation that protects our nation's precious water resources," the group's president, Jay Timmons, said in a statement.

Thursday's move is part of a broader effort by the administration to roll back regulations affecting the private sector before the end of Trump's first term. Among the dozens already reversed are rules on everything from curbing methane emissions from drilling operations to holding oil and gas companies responsible for killing birds that get ensnared in their rigs' waste pits.

"We will finalize all of our top priorities," Wheeler said.

Several of the administration's early wins came through the Congressional Review Act, which allows lawmakers to nullify any rule within 60 days of enactment. The Republican-controlled Congress in 2017 was able to overturn several of President Barack Obama's last environmental acts that way, sending the bills to Trump for his signature.

Reversing older regulations, such as the Clean Water Rule, has proved more difficult. Wheeler said it was taking longer than first anticipated to finalize the administration's new standards because staffers were conducting economic and scientific research to bolster the case for shrinking the federal government's authority over wetlands and streams.

"I'm not in a rush to meet artificial deadlines," he said. "I want to make sure that our regulations are grounded, that they have all the supporting information they need to be upheld by the courts."

Irvin said his group was prepared to take the EPA to court over its latest rollback.

"Clearly the administration is intent on rolling back as many protections as it can before January of 2021," he said. "Like any rushed efforts, they are likely to make mistakes that will be challenged and overturned in court."

Supporters of the administration are eager for the change.

On a recent evening in Hugo, Minn., Fran Miron looked out over the 800-acre farm that his family has maintained for four generations and explained why he welcomes the Trump administration's latest rollback. He said the Obama rule led to widespread confusion, as well as worries about increasing costs and red tape.

"In my opinion, and I think it's shared by many, this was really just a power grab," said Miron, 65, whose family milks 120 cows and grows corn, soybeans and alfalfa.

A former mayor of Hugo, Miron said he believes that the federal government doesn't always know what's best for a particular place.

"The best decisions are made locally because the local people understand the nature of the issues," he said. "They understand the nuances of the land and our water."

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DETAILS

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